

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date: MAR 12 1997

NO PROTEST RECEIVED
Please copies to District

Date 7/9/87

Surname [REDACTED]

DO: [REDACTED]

EIN: [REDACTED]

Dear Applicant:

This is in regard to your application for recognition of exemption under section 501(c)(6) of the Internal Revenue Code.

We have reviewed the information you have submitted and have concluded that you do not qualify for recognition of exemption under section 501(c)(6) of the Code.

You were incorporated in August of 1994. Your articles of incorporation state that you were established to create environmentally-conscious, state-of-the-art manufacturing technologies; to demonstrate and provide training in such technologies creating independent validation; and to assist in problem solving related to current manufacturing practices.

In your submissions you describe your functions as being:

1. to provide a hands-on facility for manufacturers to learn new technological practices and procedures in an atmosphere conducive to the direct transition of such practices and procedures to the manufacturer's own facilities,
2. to provide a teaching factory for regional universities where graduate students and university faculty members will have the opportunity to perform projects in a hands-on working facility with the latest equipment and laboratory facilities,
3. to provide continuing education courses for companies to keep current regarding developments in areas such as environmental issues and process improvements,
4. to produce small quantities of printed wiring boards for the [REDACTED] when production by members of the industry would be impossible or in times of national emergency,

5. [REDACTED]

Re: [REDACTED]

M [REDACTED]

6. to provide all information and technology obtained through your operations to the industry through R&D reports which will be published regularly.

You have submitted the following breakdown of your activities:

- research 20 percent
- testing 20 percent
- training/education 30 percent
- production 5 percent
- technology transfer 25 percent

You have represented that the small businesses who populate the industry will benefit by participating in and observing research activities which they could not afford alone. These small businesses will be exposed to more cost effective manufacturing practices which the government has utilized in now declassified programs. The results of all research activities will be presented at trade association meetings, published in trade journals and by workshops at the facilities. All research will be made available to the entire industry. All patents for any intellectual property developed by the staff will be held by you. You can also be hired to develop intellectual property by contract. However, you have represented that you will require assurance that this new technology will be made available to the industry. In addition, you state that you are not designed to develop sole-use technologies.

In your letter of June 27, 1996, you state that laboratory related activities are not your primary activity. You estimate that such activities will use significantly less than 10 percent of your resources.

On the other hand your Business Implementation Plan of June, 1995, paints a different picture. Absent expected membership income (to be discussed later), contracts, proposals, grants and board production are the major sources of your income. The implementation plan indicates that your facility will cost in the nature of \$7,500,000. It states that private sector operations use every square foot-available in the facility. The loan agreement from the [REDACTED] indicates that it expects that its loan will be repaid from royalties earned on your commercial sales.

Your promotional brochure states that you were established to forge a technical link between the [REDACTED] and the [REDACTED]. In essence it appears that you are to be the manager of this "factory of the future." Your funding came from [REDACTED]

Re: [REDACTED]

[REDACTED]
[REDACTED] The promotional and other materials you have provided indicate that continuing funding is expected to come from government and other research contracts and grants.

You also indicate that you will engage in research on behalf on the government and will perform research for corporations and non-profit organizations. In research projects you state that you will be acting as the project manager and demonstration site. Projects will be done on a cost-only basis and any financial benefit will be applied to the internal research program. Testing will be done to verify that new products meet industry standards. The Business Implementation Plan you have submitted indicates that you expect to have a gross profit margin, before certain operating costs, running from 30 to 50 percent. In your letter of October 25, 1996, you indicate that you have successfully completed the development stage of the laser ablation of a circuit board. You are proceeding with the licensing of this technology and anticipate holding four seminars or technology demonstrations during 1997.

You were established by and are governed by an independent board of trustees. You state that only member of your board who is involved with a private company in the printed wiring boards industry is your founder and president. As regards the other members of your board, one was a director of the [REDACTED] when it was operated on behalf of the [REDACTED], one appears to be a business and community activist, another is a real estate developer and investor, another is a [REDACTED] who was involved in the aerospace industry and the last member was a small businessman involved in general engineering and environmental services.

You were established as a membership organization and incorporated in 1994. Your members are to be elected by the members of your board of trustees. The members of your board are your initial trustees, they were not elected by your members and future trustees will be appointed by your current trustees. You have no materials setting forth the rights and duties of members or soliciting new members. There is nothing in the information we have received showing that your regular members will enjoy any special rights or privileges by reason of their membership in you. You have stated that you plan to have a membership which is open to any organization interested in manufacturing electronics. In addition, a majority of your members will be representatives of organizations specifically interested in printed wiring boards technology. Furthermore, your implementation plan indicates that you expected membership income to be the single major source of annual income.

Re: [REDACTED]

However, even though you completed your implementation plan and applied for a grant in 1995, you still do not appear to have initiated a campaign to attract members. You do have the limited support of the [REDACTED], a 501(c)(6) organization in the industry. However, it is not a member but, as indicated in its letter of January 30, 1995, a potential customer. In your letter of January 11, 1996, you state that you expect to engage in a formal campaign to attract members. However, as of the date of your last letter you state that you had only begun soliciting for members in October, 1996.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. The activities of the organization must be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

In Hunt v Washington Apple Advertising Commission, 432 US 333. (1977), the Supreme Court of the United States looked to certain indicia of membership to determine whether a state promotional organization had standing to bring an action on behalf of the state's apple growers. The court found that the growers possessed all the indicia of membership in the organization; they alone elected the members of the Commission, they also served on the Commission and financed its activities through assessments levied on them.

Rev. Rul. 68-264, 1968-1 C.B. 264, holds that primary activities that constitute a regular business of a kind ordinarily carried on for profit will preclude exemption from Federal income tax under section 501(c)(6) of the Code. In this case, the organization was providing services to members and nonmembers alike.

Rev. Rul. 69-632, 1969-2 C.B. 632 holds that a nonprofit organization composed of members of a particular industry to develop new and improved uses for existing products of the

Re: [REDACTED]

industry is not exempt under section 501(c)(3) of the Code but may qualify for exemption under section 501(c)(6). In this situation no services were performed for any individual member, nor were trademarks licensed to any member on an exclusive basis. Therefore, it was concluded that the association's activities were directed towards improving the business conditions of the industry in general. However, this was a membership organization and its income came from membership dues and assessments.

The information you have submitted indicates that your primary activity is managing and/or operating a laboratory facility and disseminating the results of the research. You have represented that the provision of laboratory services will use significantly less than 10 percent of your resources. You represent that your contracted for research activities will be done on a cost basis. However, the first breakdown of your activities which you provided us indicates that 20 percent of your activities will involve active research, testing will involve another 20 percent, actual manufacturing will constitute 5 percent of your time and technology transfer another 25 percent. In addition, the financial information you have submitted and your Business Implementation Plan of June 1995 indicate that laboratory work is expected to be your primary source of income (aside from membership dues) and that you expect profit margins in the nature of 30 to 50 percent over the next several years. You also state that your entire facility space is dedicated to private sector operations. Your promotional brochures also support this conclusion.

Accordingly, we have concluded that your primary activity is to operate a laboratory. We agree that engaging in research on behalf of an industry can be a good section 501(c)(6) activity. See Rev. Rul. 69-632, supra. However, if your primary activity is to engage in a regular business of a kind ordinarily carried on for profit you will not qualify for exemption under section 501(c)(6) of the Code. See section 1.501(c)(6)-1 of the regulations and Rev. Rul. 68-264, supra.

As stated above, we have concluded that your primary activity is to manage or carry on the activities of a research laboratory. Our analysis of the submitted information indicates that your research, testing and marketing activities have the general characteristics of a business carried on for profit. You solicit contracts from both the government and private industry and expect to earn a gross profit from these contracts. Unlike the organization described in Rev. Rul. 69-632, supra, you are only accountable to the members of your board of trustees and not the members of the entire industry. The terms of one of your grant/loan agreements indicates that they expect you to repay the loan by paying them a percentage of the royalties you are to

Re: [REDACTED]

earn. You have indicated that your research activities are driven by the industry's needs. However, your history and other surrounding information does not substantiate that your primary activities are other than those of a commercial research laboratory or similar facility.

In addition, you do not qualify for exemption under section 501(c)(6) because you are not a truly a membership organization. The statutory construction of section 501(c)(6) of the Code establishes that Congress intended to exempt under section 501(c)(6) organizations which are membership organizations operating to further the common business interests of their members. Your entire history is that of a corporate entity which is separate and apart from the printed wiring board industry and related trade associations. You were established by and controlled by your board of trustees with federal, state, and local government grants and assistance to continue the operation of a Department of Energy contract facility. Your governing instrument provides that your only members with any rights are the members of your board of trustees. They elect members and appoint their own successors. Even though you have done a research project and are seeking to obtain a license for that product, and are actively soliciting additional contracts, you have only recently begun recruiting members. Therefore, it appears that you do not rely upon membership dues from the members of the industry as a primary source of funding. You do not have any brochures or similar documents to be used in recruiting members. Therefore, you cannot qualify for exemption because you are not a membership organization within the meaning of section 501(c)(6)./ See Hunt v. Washington Apple Advertising Commission, supra.

Accordingly, as previously stated, we have concluded that you do not qualify for exemption under section 501(c)(6) of the Code and must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

Re: [REDACTED]

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If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office.

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: CP:E:EO:T:5 JJ, Room 6539. These symbols do not refer to your case but rather to its location.

Sincerely yours,
[REDACTED]
[REDACTED]